



Issue Date: 30 June 2008

CASE NO.: 2008-CAA-2

In the Matter of:

JANINE REES,
Complainant,

vs.

WASHINGTON DEPARTMENT OF LABOR & INDUSTRIES,
Respondent.

ORDER APPROVING SETTLEMENT AGREEMENT

By letter dated May 5, 2008, Claimant submitted a document that she identified as a settlement agreement. She requested that I dismiss this action in the light of the settlement. Respondent filed another copy of the same settlement agreement by letter dated May 7, 2008.

Settlement at this stage of a Clean Air Act case requires the approval of the administrative law judge. 29 C.F.R. §24.111(d)(2). I take the submission of the settlement agreement as a request for approval. It is my duty to review the settlement to be certain that it is fair, adequate, and reasonable. Given that Claimant is unrepresented, I will review the proposed settlement with particular care.¹

Having reviewed the proposed agreement, on May 15, 2008, I issued an order requiring that the parties submit further information to clarify several of the agreement's provisions.

On June 30, 2008, the parties appeared at a telephone conference. Also present was a representation of Complainant's union. Complainant represented herself, and Respondent appeared through counsel of record.

The parties provided thoroughgoing information about the details of their agreement. Complainant's work for Respondent includes certain industry inspections that implicate the Clean Air Act. Following one such investigation, Complainant filed a criminal complaint under the Act against a company being inspected. She brought the complaint to the appropriate federal

¹ The settlement agreement provides in part that Claimant will withdraw and not pursue any grievances under an applicable collective bargaining agent. Apparently for that reason, the Washington Federation of State Employees is a party to the settlement. The union's "Field Representative" has signed the agreement. There is nothing to indicate that the Field Representative represents Claimant with respect to this present action before me.

agency. This amounts to protected activity under the Act. Complainant alleges certain threats against her in retaliation for her making the federal complaint.

It seems that Complainant's efforts led to her being investigated herself and a report being issued with apparently derogatory comments about Complainant. The parties' settlement agreement refers to this as the "Butler report." Complainant vigorously denies the veracity of the derogatory comments, and Respondent does not defend them. Rather, Respondent views Complainant as an extremely valuable employee. It has kept Complainant on full wages throughout the dispute.

The parties' agreement is designed to limit disclosure of the Butler report to the extent that state law allows limitation of information held by a state agency. It establishes a procedure by which the report is sequestered such that its release can be monitored. In the event of a request for release, Respondent will notify Complainant, assist her if she wishes to move an appropriate court to quash the disclosure demand, and allow her an opportunity to include a rebuttal if the disclosure is going to occur. In the event that the party whom Complainant inspected brings any litigation against Complainant in connection with this, Respondent acknowledges that Complainant was at all relevant times acting within the course and scope of employment, and they refer would refer the matter to the Washington Attorney General for defense and indemnification.

The agreement has other provisions also aimed as securing Complainant's reputation. Complainant participated directly in negotiating the agreement. She received advice from her union's in-house counsel, and based on that advice, demanded certain changes be made to the agreement. She is fully satisfied and believes that, given all of the legal constraints on Respondent as a state agency, and given her employers direct and express apology, this agreement is the best she can get and is sufficient and appropriate.

Considering this additional information, the Order of May 15, 2008 is VACATED. The motion to approve the settlement and dismiss the case is GRANTED. The agreement is reasonable, appropriate, and not the result of duress or coercion. Accordingly, the settlement agreement is APPROVED. This matter is therefore DISMISSED.

SO ORDERED.

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STEVEN B. BERLIN
Administrative Law Judge